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November 9, 1999

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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Re: *Extending Wireless Telecommunications Services to Tribal Lands*,  
WT Docket No. 99-266, FCC 99-205

## Comments of Western Wireless Corporation

Dear Ms. Salas:

On behalf of Western Wireless Corporation ("Western Wireless"), I am enclosing for filing an original and four copies of Western Wireless' Comments in the referenced proceeding.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,

  
Ronnie London  
Counsel for Western Wireless Corp.

Enclosures

cc: Attached Service List

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Extending Wireless	)	WT Docket No. 99-266
Telecommunications Services	)	
to Tribal Lands	)	

**COMMENTS OF WESTERN WIRELESS CORPORATION**

Western Wireless Corporation ("Western Wireless"), hereby submits its comments on the Notice of Proposed Rulemaking in the captioned proceeding. 1/ Western Wireless applauds the Commission's recognition of the vital role wireless telecommunications can play in improving basic telephone penetration rates to areas of the country that remain most in need of such assistance. 2/ As the FCC has noted, Western Wireless has taken significant steps toward providing universal service to high-cost and rural areas, including Indian reservations. 3/ Specifically,

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1/ *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Notice of Proposed Rulemaking, FCC 99-205 (rel. August 18, 1999) ("NPRM").

2/ NPRM at ¶ 7.

3/ *Id.* at ¶ 8 (recognizing Western Wireless' submission of data indicating that the forward-looking costs of cellular service are less than that of wireline providers for some wire centers); *id.* at 5-6, ¶ 9 (acknowledging Western Wireless' operation of hybrid fixed/mobile cellular systems to provide universal service offerings in North Dakota and Nevada); *see also Western Wireless Corporation Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Services Eligible for Universal Service Support to Crow Reservation, Montana*, CC Docket No. 96-45, Public Notice, DA 99-1847 (rel. September 10, 1999) ("*Crow Petition*").

Western Wireless has requested a waiver of the unserved area rules to provide permanent service on the Pine Ridge Indian Reservation in South Dakota. In addition, the company has petitioned the FCC to qualify for subsidies for providing universal service to the Crow Reservation in Montana. 4/

Western Wireless believes that the Commission can advance the goal of improving telephone penetration rates in tribal and other underserved areas by taking action in two key areas. First, the Commission must take steps to ensure that wireless telecommunications providers have a full opportunity to participate in the federal universal service program. Second, the Commission should adopt many of the technical reforms proposed in the NPRM. Western Wireless details below the specific regulatory steps that will facilitate the expansion of existing wireless services into tribal and unserved areas.

**I. THE FCC SHOULD ENCOURAGE WIRELESS SOLUTIONS TO ADDRESS THE LOW PENETRATION RATE ON TRIBAL LANDS AND SHOULD ENSURE FULL WIRELESS PARTICIPATION IN FEDERAL UNIVERSAL SERVICE PROGRAMS TO FURTHER THAT GOAL**

Wireless carriers can play a key role in providing basic telephone service to geographically isolated areas such as Indian reservations, as recognized in the NPRM. Wireless providers can in many instances offer service in high-cost areas with diffuse populations as cost effectively as, or more cost effectively than,

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4/ See *supra*, note 3, noting pendency of *Crow Petition*.

wireline carriers. 5/ Given the prevailing low income levels on Indian reservations, the affordability of telecommunications service is likely to be a key determinant in improving the penetration rate. 6/ In short, the Commission is correct in its belief that wireless technologies can do much to improve penetration rates for basic telephone service on tribal lands and other unserved areas. 7/

Given that tribal and insular lands often consist of rural or high-cost areas, the FCC should ensure full wireless participation in the federal universal service program. Only by doing so will the Commission facilitate the provision of basic telephone service in presently unserved or underserved high-cost areas. The prerequisite to a carrier's participation in the federal universal service program, however, is being designated as an eligible telecommunications carrier ("ETC"). 8/ Thus, assuring that wireless carriers are readily designated as ETCs is absolutely critical to the FCC's initiative to improve tribal telephone penetration.

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5/ See *supra*, note 3; see also *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural ILECs*, CC Docket Nos. 96-45, 97-160, Further Notice of Proposed Rulemaking, FCC 99-120, n.33 (rel. May 28, 1999) (*citing* Letter from David L. Sieradzki, on behalf of Western Wireless, to Magalie Roman Salas, FCC, January 26, 1999 (submitting "Wireless Cost Model")).

6/ See NPRM at ¶ 2.

7/ NPRM at ¶ 4.

8/ See 47 U.S.C. § 254(e) ("After the date on which Commission regulations implementing this section take effect, only an [ETC] designated under section 214(e) shall be eligible to receive specific Federal universal service support.").

In furtherance of that objective, the FCC should implement Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), 9/ to achieve its universal service goals. Given the patchwork of ETC designation policies and practices that have sprung up among the several states, 10/ the FCC should exercise its Section 214(e)(6) jurisdiction wherever possible. The FCC has demonstrated its ability to expediently designate carriers as ETCs using appropriate ETC criteria. 11/ Making the FCC the forum, wherever possible, for designating ETCs on tribal lands (and surrounding areas, if necessary) will facilitate wireless carrier provision of service to unserved and underserved tribal lands.

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9/ 47 U.S.C. § 214(e)(6).

10/ For example, over one year ago, Western Wireless submitted substantially identical applications for designation as an ETC in 13 states. To date, Western Wireless has been granted ETC status in one state (Minnesota), denied ETC status in another (South Dakota), been forced to withdraw its application in another state due to unduly burdensome discovery demands (Montana, where the company faced over 465 data requests), and had its ETC application dismissed in still another state on jurisdictional grounds, but only after a year-long adjudicatory proceeding (Wyoming). Meanwhile, applications in other states languish in various procedural quagmires, even though the incumbent local exchange carriers ("ILECs") there faced no such impediments in their pursuit of ETC designation. Obviously, each of these states has a very different approaches toward granting carriers the right to participate in the *federal* universal service program.

11/ *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd 22433 (CCB 1998); *Designation of Fort Mojave Telecommunications, Inc., et al, as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd 4547 (CCB 1998).

To the extent that the Act requires that state commissions exercise jurisdiction under Section 214(e)(2) 12/ to designate carriers wishing to provide universal service to Indian lands, the FCC should ensure that this duty is carried out expeditiously, as well as consistently with the Act. First, the FCC should require that ETC designation procedures for wireless carriers are as expeditious and no more burdensome those that for ILECs. Second, the FCC should rule that carriers need not already be providing a ubiquitous universal service offering prior to designation as an ETC, and that "gaps" or "drop-outs" in wireless carrier coverage areas do not disqualify them from being designated as ETCs. 13/ So long as a wireless carrier can demonstrate this ability, and its commitment to fulfill it, the wireless carrier should be designated as an ETC. By taking these steps, the Commission will ensure that wireless carriers can be designated as ETCs and thus provide much-needed service to unserved and underserved high-cost and rural areas, including Indian reservations.

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12/ 47 U.S.C. § 214(e)(2).

13/ See Comments and Reply Comments filed in *Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Public Notice, DA 99-1356 (rel. July 19, 1999).

## **II. THE FCC SHOULD PROVIDE THE REGULATORY FLEXIBILITY CONTEMPLATED IN THE NPRM BY ADOPTING MEASURES THAT ENABLE THE USE OF EXISTING SPECTRUM AND WIRELESS SYSTEMS TO SERVE TRIBAL AND UNSERVED AREAS**

Western Wireless agrees with many of the NPRM's suggested regulatory approaches for encouraging existing wireless carriers to extend service to tribal lands. <sup>14/</sup> With a few exceptions discussed below, the proposed relaxation of the FCC's licensing rules for terrestrial wireless carrier will help achieve the objective of increasing tribal telephone penetration rates. Western Wireless does not believe, however, that it is necessary at this time to provide unallocated or unlicensed spectrum, or to license spectrum in bands allocated to other services, to increase penetration on tribal lands by wireless carriers, as explained below.

Many of the FCC's proposals will enable existing wireless terrestrial carriers to improve telecommunications service on tribal lands. For example, the FCC proposes liberalized build-out requirements for licensees who focus early construction efforts on tribal lands. <sup>15/</sup> Western Wireless concurs, and further recommends that the FCC waive the unserved area rules for tribal lands. The FCC should require notification for such areas, as opposed to the full Phase II requirement of filing an application, having it placed on public notice, and awaiting

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<sup>14/</sup> NPRM at ¶¶ 16-42.

<sup>15/</sup> *Id.* at ¶¶ 23-24.



a grant. 16/ In the alternative, the Commission could adopt a permissive and expeditious special temporary authority ("STA") process for tribal lands during the pendency of applications to provide service there. 17/ Both these approaches would allow wireless carriers the opportunity to construct and deploy service as soon as all necessary tribal approvals are obtained.

In addition, sufficient flexibility should be built into the FCC's procedures for bringing new service to tribal areas to reflect the often lengthy and arduous process wireless carriers face in seeking tribal approval to deploy facilities to provide new service. The FCC should also relax or forebear from applying its environmental assessment requirements for new service to reservations given that tribal authorities would have already given their approval by way of having issued a building permit for the facility.

As recognized in the NPRM, many reservations do not conform to rural statistical area ("RSA") boundaries, so the existing rules may prevent one licensee from providing service to the entire tribal land. 18/ To remedy this impediment, the

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16/ See 47 C.F.R. §§ 22.949-22.953, 22.960-22.967. Specifically, licensee should be allowed to merely notify the Commission that the facility has been constructed and provide the operational parameters thereof, rather than being forced to undergo the more extensive process described above.

17/ Either way, the FCC should expedite processing of all applications and STA requests for tribal areas to avoid undue regulatory delay.

18/ *NPRM* at ¶ 25.

Commission should relax the requirements for cellular geographic service area ("CGSA") overlaps with neighboring markets, as suggested by the NPRM. 19/

Western Wireless believes that, by adopting the above suggestions, the Commission can sufficiently facilitate the extension of wireless service onto Indian reservations so that the further measures suggested in the NPRM will be unnecessary. For example, there is no need for the FCC to modify its height/power rules. 20/ Nor should the FCC expand its permissible service definitions. 21/ Given that there is already adequate spectrum in these areas, the objectives of this proceeding would be better served by ensuring that all carriers can be designated as ETCs and benefit from universal service subsidies, as described above. Finally, Western Wireless emphatically opposes the FCC's suggestion to condition additional flexibility on the existence of binding agreements between licensees and affected tribes. 22/ The spectrum that will be used to meet tribal needs is the same spectrum used to serve other consumers and therefore is properly considered a public good belonging to all the people of the United States. Allowing any group or

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19/ *Id.* at ¶ 27. The Commission must also relax or resolve unserved area issues in markets currently locked-up in Phase I. For example, Western Wireless finds itself in this situation as to the Nebraska 1 RSA, where the company currently must request a waiver of the unserved area rules to provide permanent service on the Pine Ridge Reservation, due to extensions of Western Wireless' coverage into the Nebraska 1 RSA.

20/ *See id.* at ¶¶ 17-22.

21/ *Id.* at ¶¶ 28-34.

22/ *Id.* at ¶¶ 40-42.

geographic area to control the use of spectrum will delay or inhibit deployment of technologies using that spectrum. 23/

Western Wireless believes that implementation of the above reforms should provide significant opportunities for existing carriers to improve service to Indian reservations and make it unnecessary for the FCC to license new terrestrial wireless providers solely on tribal lands. 24/ Sufficient spectrum already exists for current services to meet the needs of tribal and other currently unserved or underserved areas. In addition, Western Wireless also believes that allowing "drop-in" licenses to provide service to tribal lands would not be effective and would likely lead to consumer confusion. Only where the existing licensee is unwilling or unable to provide service to reservations should the FCC consider issuing new licenses.

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23/ Western Wireless does acknowledge, however, that there must be greater cooperation and understanding between the FCC and the Bureau of Indian Affairs ("BIA") regarding each other's regulatory requirements. Processors at the FCC must understand the processes of the BIA.

24/ NPRM at ¶¶ 43-53.

### III. CONCLUSION

The reforms proposed by the NPRM are on the whole steps in the right direction toward improving telecommunications penetration on tribal lands and in other underserved areas. Wireless telecommunications carriers can play a key role in advancing this initiative, and Western Wireless supports the Commission's efforts in this endeavor.

Respectfully submitted,

**WESTERN WIRELESS  
CORPORATION**

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